

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

UNITED STATES OF AMERICA

V.

JOSHUA HEATH ZUNIGA

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CRIMINAL NO. 5:06-MJ-055

DISCOVERY MOTION - EXTRANEIOUS ACTS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Defendant in the above-styled and numbered cause, by and through his attorney of record, and respectfully requests that the Court instruct the prosecuting attorneys to divulge evidence of any prior convictions, alleged violations of the law not alleged in the indictment, or extraneous acts allegedly done by the Defendant or other alleged co-conspirator in this cause at a reasonable time prior to trial (at least two weeks) so as to permit counsel to determine the following:

1. Whether the conviction was punishable by death or imprisonment in excess of one (1) year under the law which the conviction was rendered.
2. Whether the conviction, alleged violation or extraneous act has such prejudicial effect to the Defendant so that said prejudicial effect outweighs the probative value of said testimony.
3. Whether the conviction, alleged violation or extraneous act occurred at a time sufficiently recent to have some bearing on the present cause of action.

4. Whether the person now on trial or the person who allegedly committed said act is the same person now connected with this trial.
5. Whether said conviction, alleged violation or extraneous act is admissible, pursuant to the Federal Rules of Evidence. In particular, Defendant would direct the Court's attention to Federal Rules of Evidence 404(b).

WHEREFORE, PREMISES CONSIDERED, it is respectfully requested that the Court order the prosecuting attorneys to make said disclosures at a reasonable time prior to trial (at least two weeks).

Dated: July 19, 2006.

Respectfully submitted,

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BY: /s/ MARK EIGLARSH
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BY: /s/ DANIEL W. HURLEY
Texas Bar No.: 10310200

CERTIFICATE OF SERVICE

I certify that on July 19, 2006, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the

following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

Steve Sucsy
Assistant U. S. Attorney
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401

/s/ MARK EIGLARSH

CERTIFICATE OF CONFERENCE

I certify that I conferred with Steve Sucsy, the Assistant U.S. Attorney assigned to this matter, regarding the filing of the foregoing and she does not oppose said motion to the extent the motion requests discovery allowed under Rule 16 and Brady.

/s/ MARK EIGLARSH
Attorney for Defendant